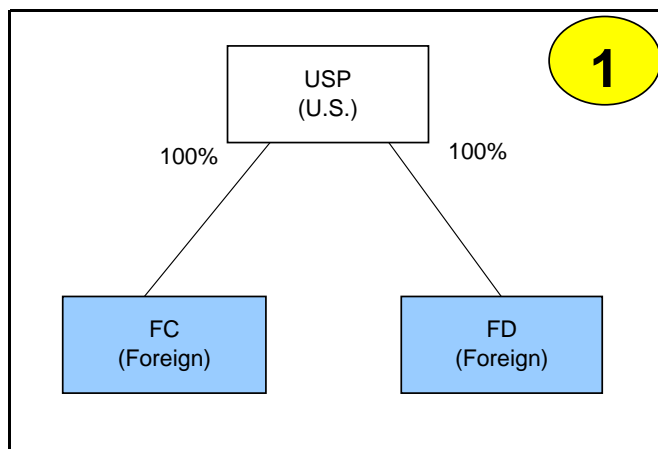


**Temp. Reg. 1.367(a)-8T(h)(2)(iv),  
Example 1**

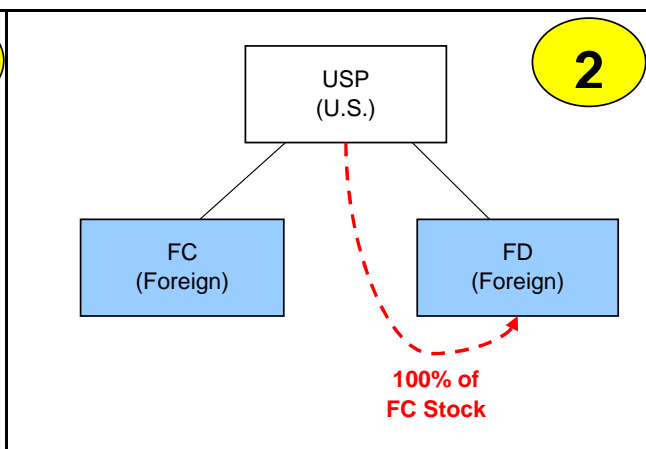
**2003 Outbound 351  
Exchange & 2005 Spin-Off**

Copyright © 2007 Andrew Mitchel LLC  
International Tax Services  
www.andrewmitchel.com

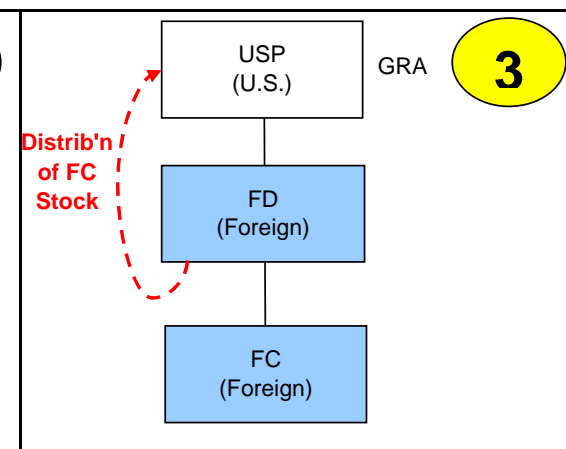
**Initial Structure**



**Outbound 351 Exchange (2003)**



**Spin-Off (2005)**



USP, a domestic corporation, owns 100% of the stock of two foreign corporations, FC and FD. In 2003, USP transfers 100% of the stock of FC to FD in an exchange to which section 351 applies. The transaction is subject to both sections 367(a) and (b). USP enters into a gain recognition agreement with respect to the initial transfer. USP also complies with the notice requirement under §1.367(b)-1(c). In 2005, FD distributes all of the stock of FC to USP in a pro rata distribution to which section 355 applies. Under section 358, USP's basis in its FC stock exceeds the basis that USP had in FC immediately before the initial transfer.

The rules of §1.367(a)-8 apply because the gain recognition agreement was filed before March 7, 2007. As a result of the year 2005 transaction, under §1.367(a)-8(e)(1), USP is required to recognize all of the gain subject to the gain recognition agreement, and pay any applicable interest. The gain recognition agreement does not terminate under §1.367(a)-8(h)(3) because USP's basis in its FC stock immediately after the section 355 distribution exceeds the basis USP had in the FC stock immediately before the initial transfer. However, paragraph (g)(3)(iii) of this section provides a rule that would allow USP to elect to reduce its basis in the FC stock such that the conditions in paragraph (g)(3) of this section would be satisfied and the gain recognition agreement would terminate without further effect. Under paragraph (h)(2)(i) of this section, USP may apply paragraph (g)(3)(iii) of this section to the 2005 transaction, if 2005 is an open year, because the rule provided in paragraph (g)(3)(iii) of this section was not already effective under §1.367(a)-8. Under paragraph (h)(2)(ii) of this section, USP must submit the documents required under paragraph (g)(3)(iii) of this section to a Federal income tax return amending its 2005 Federal income tax return before August 6, 2007.

**Ending Point**

